Canons of Construction

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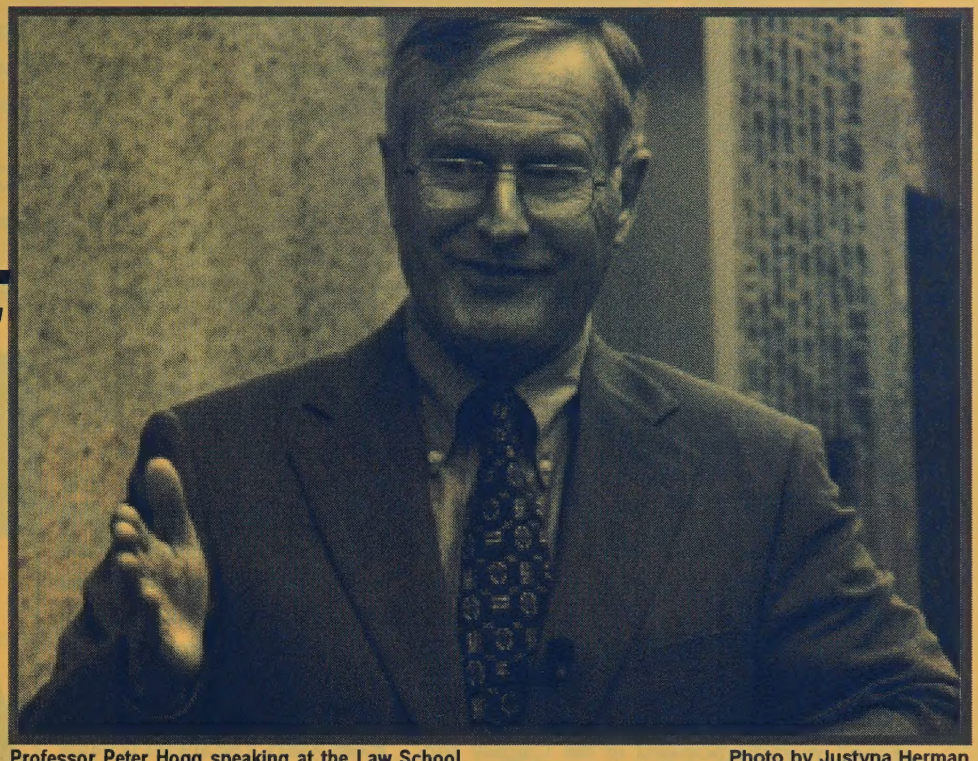
Peter Hogg on s.15 of the *Charter*:

"It's just a grunt"

D. James Anderson (1L)



Professor Peter Hogg speaking at the Law School Photo by Justyna Herman

On October 18, the widely revered–and possibly fetishized–constitutional guru Professor Peter Hogg dropped by our little box of concrete to give us not one, but two special lectures. The first, which was held at lunch and had the larger audience, dealt with the mysteries of *Charter s.* 15 and equality, while the second, less subscribed to, and slightly more recondite (and I mean this facetiously, not the way Michael Enright would) lecture covered the Canadian Health Care System in a fairly limited manner, and mostly from the jumping-off point of the Supreme Court's recent *Chaoulli* decision, which pissed off Tommy Douglas lovers to no end.

Professor Hogg proved to be a remarkably engaging speaker, even if his chosen subjects were less than tiger balm on tight muscles. Of course his great draw as a speaker–and as a writer–was that he can render our dear little constitution in perfectly clear, easy-to-access language.

In fact, his speaking was so clear that it tended to be a little hypnotic, and so as we in the audience were lulled into the deep, special sort of comfort that overworked people sometimes are lucky enough to get in the middle of our otherwise hectic days, we were many times stunned into attention as he would bring his argument into focus with a suddenly loud and sharply worded phrase.

"The wrong side has won," he barked, for example, alerting us that his feeling about the interpretation of s. 15 was not just a disinterested academic affair.

Now after listening to him speak, I have become confident that if presented with a plate of spaghetti, he would be able to clearly and concisely describe to me not only the route, and the meaning of that route, of every individual noodle involved in the meal, but also the significance of each route as it applied to the federation of spaghetti noodles that had originally constituted my meal. Which is a reasonable description of what he has done with Canadian constitutional law, no?

Although he claims it was not so easy. In fact, according to Professor Hogg, our constitution is as easy to digest as a plate of uncooked spaghetti; he only makes it seem easy as he has a special constitutionally adept stomach.

For example, when he pointed out that s. 15 enforcement is restricted to only grounds analogous to those situations that are enumerated–race, national or ethnic origin, and so on–and that so far only three analogous grounds have been recognized by our Supreme Court friends–citizenship, marital status, and sexual orientation–the crux of his argument felt as obvious as the plot of an episode of *Desperate Housewives*.

Having already made it obvious, though his special verbal gifts, Professor Hogg put it best when he concluded "It is troubling that [s. 15] excludes such a large number of grounds.... In a sense it allows discrimination."

This idea is supported by the fact that possibly analogous grounds that have been rejected, include one's place of residence ("too easily changed," said Hogg) and privileges that the Crown has in litigation.

This was one of his key points for his first lecture–and he made it well, methodically, and a little surprisingly. While s. 15 of the *Charter* should be the Great Equalizer under Canadian law, the restrictive manner in which its provisions have been applied have allowed this garden to cultivate its own weeds of discrimination.

Now at this point, since it's always a good idea to take a break and consider what Mordecai Richler thought about the *Charter*, let's do that now.

In a *New Yorker* article from 1991, after commenting in general about the 1981 constitutional deliberations between Ottawa and provincial leaders who were "most of them provincial in more than status," Richler makes his subsequent point about the *Charter*; "The *Charter* was also undermined by something like a satisfaction-or-your-money-back guarantee," he wrote, meaning specifically the notwithstanding clause.

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From Your VP SOCIALS

Jennifer Young (3L) &
Laura Gill (2L)

Photo by Justyna Herman

We're already into November and the year has been full of good times so far. The recent Rugby Alumnifest was a success - resulting in a win for the Olden Bearristers, a fabulously pink Panda Bearristers game, and a great party at Overtime later that night. After many first and second years participated in the Calgary and Edmonton OCIs and Wine and Cheese on October 26th, everyone was more than ready for the Halloween Party put on by Grad Committee 2006. Law students took over the Druid downtown dressed to impress in some elaborate costumes.

Looking for more parties before looming exams and paper due dates? Upcoming events include a Law Games Pub Crawl and the Rugby FABS on November 18th. Unfortunately we have had to delay the Med Mixer until next semester due to scheduling conflicts, but don't forget about the Thursday night specials at Scholars that come with your LSA membership.

In LSA news, watch out for the Who's Who to be ready for pickup in the next couple of weeks. Make sure to come out and support Cuts for a Cure on November 9th. Yearbook pictures for first and second years will be one day and one day only this year. Mark your calendars and do your hair for November 23rd from 11:30 to 2:30 in the Gavel. Grad pictures will be taken on Nov. 21 & 22 in room 448B. The always popular LSA Turkey Lunch will also be held later this month, as well as the Kids' Christmas Party on December 3rd.

If any Club would like to hold a FABS, please let us know. Thank you for all of your participation, and make sure to come out to the upcoming events!

IMPORTANT NOTE:

JOSTENS WILL BE TAKING **GRAD PICTURES** ON **NOV. 21 & 22** IN **ROOM 448B.**

CUTS FOR A CURE

WHAT? Your classmates and professors shaving their heads to raise money for Cancer Research (all money raised going to Canadian Cancer Foundation)
WHEN? Nov 9th 12-2pm
WHERE? Couches
Pledge forms can be picked up from, and any donations can be given to, Kris Nielsen at the couches at lunch time or the LSA office.
Come on out and support this fantastic event!!

YEARBOOK PICTURES - 1L & 2L
November 23 in the Gavel 11:30-2:30

LSA is a proud supporter of Canons of Construction

Canons of Construction is the official Law Student Newspaper of the University of Alberta Law Faculty. *Canons'* principal objectives are to provide equitable and judicious coverage of issues and events germane to Law Students at the University of Alberta and to provide an open forum for the free exchange and expression of thought, opinions and ideas.

All law students and interested parties in the legal community are encouraged to contribute submissions, provided that contributions are accompanied by name, student number and telephone number. No articles are published anonymously. *Canons* reserves the right to edit submissions for content, length, and legality. *Canons* will not publish materials deemed by the board to be racist, sexist, homophobic or libelous. Ideas and opinions expressed in *Canons* do not necessarily reflect the views of the *Canons* board.

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Hogg on s. 15

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Using the notwithstanding clause as a jumping off point, Richler seemed to be pointing at the apparent capriciousness of the Charter's design, although Professor Hogg didn't seem ready to give in to that point.

He was willing, nonetheless, to introduce the idea that interpretations of how restrictive s. 15 actually is are at least a little capricious, the closest he did come to agreeing with Richler was to allow that "With human dignity, there's no structure at all. It's just a grunt."

And so Canadian confidence in the egalitarian basis for s. 15 is not quite restored. Still, Professor Hogg tried damned hard. It was a hell of a lecture.

Professor Hogg with Dean Percy and others — Photo by Justyna Herman

A Right to Private Healthcare?

Lecturer Milovan Prelevic

On Thursday October 18, U of A Law had the honour of welcoming a very special visitor: Peter W. Hogg, Q.C., Professor Emeritus and former Dean of Osgoode Hall Law School. Judging from the attendance at his exceptional guest lecture double-header, most students did not need to be reminded in Dean Percy's introductory remarks that such an appearance by the biggest name in Canadian constitutional law is a rare treat indeed. After delivering a noon-hour lecture on section 15 of the Charter, Professor Hogg gave a second talk later in the afternoon to a standing-room-only audience on the implications of the recent Supreme Court of Canada decision in *Chaoulli v. Quebec (A.G.)* (2005), 254 D.L.R. (4th) 577.

Of the seven justices that heard the case (including Professor Hogg's submissions as counsel for one of the intervenor groups), six analysed it under s. 7 of the *Charter*, agreeing that Quebec's prohibition on private insurance for medicare-covered services infringed the right to life and security of the person by forcing patients to remain on excessively long waiting lists in spite of increased risk to life and health caused by the delays. However, the six justices split three-to-three on the crucial question of whether the infringement was contrary to the principles of fundamental justice. Three justices held that it was, while the other three accepted the province's argument that restricting access to private insurance is in accordance with the principles of fundamental justice because it prevents the diversion of resources away from the public system.

The tie-breaking vote was cast by Deschamps J., who declined to address s. 7 at all, choosing instead to dispose of the case by applying the corresponding *Quebec Charter* provision, which contains no fundamental justice element. As a result, Deschamps J. was able to tip the scales against the province without actually breaking the deadlock on the key question that had divided her colleagues. This means that *Chaoulli* is inapplicable outside of Quebec, though Professor Hogg speculates that if a case involving another province with a similar restriction on private insurance (such as Alberta) were to come before the Supreme Court, the outcome would probably be the same. Such predictions, however, can be little more than educated guesses based on highly uncertain variables, given the recent changes in the composition of the Court and the impossibility of reading Deschamps J.'s mind.

Despite the inapplicability of *Chaoulli* outside of Quebec, Professor Hogg hopes the decision will have a broader salutary effect by making provincial governments face up to the seriousness of the waiting lists problem, and the urgent need for real healthcare reform. Reasonable people may continue to disagree about proposed solutions--including an expanded role for private healthcare alongside the public system--but at least the debate will have moved forward to the point where the *status quo* is finally recognised to be untenable and perhaps also unconstitutional.

Professor Hogg with students — Photo by Justyna Herman

Get to Know Your Professors: Assistant Professor Joanna Harrington

Justyna Herman (3L)

Q:Professor Harrington, thank you for agreeing to this interview.

I had a chance to look at your CV, which is posted on the Faculty of Law website. It shows that you have had a very interesting legal career. The one thing that stands out the most to law students is that you worked in the House of Lords. This is definitely a great achievement; how did you do that?

The answer is rather mundane. I saw a job notice at Cambridge and applied. I remember thinking that I had blown the interview by being perhaps too honest in my views, but it turned out that my boss wanted a lawyer who wasn't afraid to speak up and argue an alternative position. Shyness was not a virtue for him. As for the job itself, it was a great experience, combining my love of both constitutional law and international law. It also gave me a front row seat to a period of significant constitutional reform in the UK, including the adoption of a Bill of Rights, and that experience certainly infuses my work in constitutional law today. It was also a unique job for a Canadian-trained lawyer, but that also shows that you just never know where a law degree will take you.

Q: You have also worked at universities in various countries, including Australia, Puerto Rico and the UK. Please tell us a little bit about that experience and how it compares to teaching at the University of Alberta.

Unlike in Canada and the US, law is a first degree in Europe akin to taking a BA in humanities. This is also true for Australia, although the law degree is usually combined with another first-degree subject such as commerce. As a result, the students are usually younger than here. Interestingly, many law students in England and Australia do not go on to become lawyers and the degree is not seen as vocational training. You can in fact be a lawyer in England without having a law degree. As a result, there is far less talk in both England and Australia as to whether the law school should offer practice-related courses. It is simply accepted that the profession is best placed to teach practice. As for Puerto Rico, it was amazing to see students so comfortable with Spanish and English that they flit back and forth in both languages in class. And everyone in the class had done an exchange term in the US. Oddly enough, I got the job in Puerto Rico because the international lawyer on faculty was in jail for six weeks, having been caught on a US military base protesting the use of the island of Vieques for bombing practice.

Q: What are your reasons for coming to the University of Alberta?

I was recruited to add to the faculty offerings at U of A. We're seeing some mobility in the law professor market, with law schools acting to some extent like law firms and going after experienced professors from other schools. It has resulted in some great hires for U of A, including Professor Buckwold from USask and Professor McInnes from UWO.

Q: What do you teach?

As you'd expect, I teach in the areas of my expertise, which are constitutional law and public international law. I'm putting together a new course this year on European Human Rights, which combines both subjects and serves as a great comparator to Canadian Charter Rights. We often forget that Europeans have had a "Charter" since 1950.

Q: Professors are also paid to research as well as teach. What is the focus of your current research project?

I've been looking at the role for Parliament in the making of international treaties as a means of addressing the "democratic deficit" in our current process, particularly if Canada's courts are going to make use of the "values approach" set out in the Baker decision. I'm particularly interested in the lessons that can be learnt from the UK, Australia, New Zealand and South Africa, and I've been fortunate to get funding to go to Australia twice, as well as to New Zealand, and to Duke University in North Carolina to present my work. I also gave a presentation on this topic before international lawyers and officials from the Department of Justice and Foreign Affairs Canada last month. I'll admit that the topic has stirred far more interest in federalism than I ever had before and I've finally found an aspect of division of powers that does not relate to "chickens, pigs and eggs". My Australian piece is now out, the Canadian article should be out any day in the McGill Law Journal, and the British version is due to be published in January in the International and Comparative Law Quarterly. And then, it's on to putting together another project and another grant application.

Q: What is your favorite way of spending time outside of work?

Those who know me well would probably say "shopping" or more precisely "shoe-shopping", and I admit I have a major weakness in this department. I also love traveling. I try to be a diligent if not particularly speedy distance runner, and I'm addicted to Su Doku these days – it comes from hanging out in airport lounges waiting for a plane.

Q: What was your favorite class in law school?

I don't have just one. I really found law and legal study as a whole very interesting, which is perhaps why I found legal practice so dull. I articled at one of the leading law firms in Vancouver and had a great experience. I was well trained and the lawyers in the firm gave me real opportunities to learn and develop my confidence. (They even let me get a reported case in the LACs for a case I juniored as a student.) But I found that much of legal practice is client development and telephone tag, rather than thinking about the law and its reform. Hence, why I like being an academic lawyer – I have full freedom to choose the legal questions to which I devote my intellectual energies.

Q: Where do you see yourself in 10 years?

That's an impossible question. And I have no set plan. I can only hope I'll be thinking about new issues, facing new challenges, and learning new things, or I'll be very bored.

Q: Do you have any advice to students?

Resist the temptation to specialize too early and to practice too soon. Use these three years to take a variety of solid courses from leading experts in their fields. You have your life to practice. And you just never know what knowledge you'll need down the road. I once worked for a small human rights NGO where, apart from the senior person, I was the only lawyer. Well guess who had to draft the employment contracts, renegotiate the building lease, and verify our charitable status with the tax officials? (I was very glad I had taken employment law, real estate transactions, and tax). I also think it is invaluable to go abroad, either on an exchange term or for grad studies or for work, as it forces you to engage with legal systems different from your own and it breaks down assumptions.

Photo by Vista Pourbahrami

Law Girl: Jaimie Gruman

Hometown: Calgary.

Undergrad Studies: Business/Finance.

If you were allowed to wear whatever you wanted under the robes in court, what would it be? Track pants.

What weird exam rituals do you have? Pre-exam stretching.

If you could have an afternoon with one person dead or alive, who would it be? Tiger Woods.

If you could go anywhere in the world, where would it be? Vienna.

Favorite cartoon show from when you were younger you wish they would bring back? *Chip & Dale is Rescue Rangers.*

What was the scariest thing you have ever done in your life? Getting engaged…ha ha.

The one TV show you wouldn't miss even during exams? *Desperate Housewives* & *Dr. Phil.*

Which famous person would you want to play you in a movie about your life? Helen Hunt.

Name a fashion faux pas that drives you crazy. Edmonton Oilers paraphernalia! Ha! Ha!

Want to get involved with *Canons*?

Come to our next meeting:

Wed, Nov. 16, 2005

Room TBA

Time: noon

Law Guy: Alex Ragan

Hometown: Edmonton, AB.

Undergrad Studies: Biological Sciences.

If you were allowed to wear whatever you wanted under the robes in court, what would it be? A bonnet and crinolines.

What weird exam rituals do you have? The pre-exam mini work-out (and about 10 million pens).

If you could have an afternoon with one person dead or alive, who would it be? Abe Lincoln (alive please).

If you could go anywhere in the world, where would it be? Myanmar (Burma).

Favorite cartoon show from when you were younger you wish they would bring back? *The Bugs Bunny and Tweetie Show* (2nd place: *Transformers*).

What was the scariest thing you have ever done in your life? First aid on dying people.

The one TV show you wouldn't miss even during exams? *The Daily Show* (with Jon Stewart).

Which famous person would you want to play you in a movie about your life? Charlie Sheen (the guy obviously needs some work).

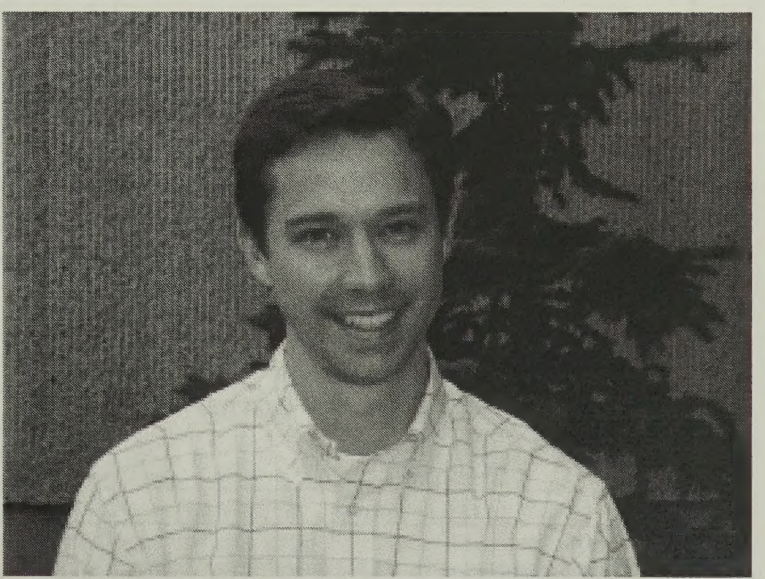


Photo by Vista Pourbahrami

Name a fashion faux pas that drives you crazy. Sweat pants – they're never OK.

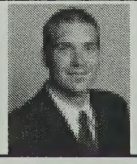
On-Campus Interview Follow Up

Compiled by Allison Eng (2L)

They interviewed us. Now it's our turn to interview them. Three law firms agreed to answer your questions.

	STIKEMAN ELLIOTT Calgary
What is an area/topic you wish students would address more often in an interview?	The interview has evolved to become less of an information-gathering process, and more about trying to establish rapport and determine if there exists the ubiquitous "fit" with a firm. I often wish students would use the interview to determine whether the environment within which they will work will be conducive both to their professional development and their personal enjoyment. Address the more personal side of professional practice; over the course of your career your colleagues will become something akin to a family. Remember that people most often leave firms over "fit" issues.
What does your firm do to ensure the mental sanity of its articling students?	The practice of law is demanding; that's the nature of the beast in a client-service industry where your timetables are not your own. Of course, in recognizing the importance of balance, we encourage our students to take the time when they have it and do something they enjoy. If you have family, spend time with your family. If you want to take a trip by yourself or with friends, do so. I have never believed in "face time" as being an important indicator of devotion to the firm, but rather of a certain lack of self-confidence. I certainly take every opportunity to relax and enjoy myself and don't begrudge others doing the same. If I didn't, I'm not sure that I'd still have my "mental sanity"!
What makes U of A students stand out from students in other law schools across Canada? Are there any areas of weakness upon which U of A students could improve?	Two attributes stick out in particular: first, U of A students have often taken core courses that we, as a business law firm, look for in a prospective articling student. We find that U of A students begin their articles with a very good grasp of basic principles of law. Second, U of A students tend to be well prepared for interviews. This includes having a good understanding of the firm and what the firm does. It also includes asking intelligent questions that help the student get a better idea of what the firm is about. It is critically important for the student to be prepared.
Am I at a detriment if I apply to firms in both Calgary and Edmonton, even when I am only trying to canvass all options? (An Edmonton-specific question)	 Keith Chatwin, Associate
To what extent does one's ties to Calgary (or Alberta) influence your decisions in the hiring process? Are a greater proportion of summer students positions being recruited from law schools outside of Alberta? (a Calgary-specific question)	As an international firm, we recruit nationally at the articling level. That said, we certainly receive the bulk of our resumes from students at Western law schools. In addition, as a member of the Calgary and larger Alberta legal community we regard it as important to look to our provincial law schools for our articling students. In terms of the importance of a tie to Calgary/Alberta, we regard it as being of fundamental importance. To be clear, when we are interviewing for a summer or full articling student, we are not recruiting solely for that summer or articling year period, but rather with a view to having that individual work with us for the foreseeable future.
Tell us about your most memorable interview (either in your capacity as a recruiter or back in your law school days when you were interviewing for a job)?	My most memorable interview involved a young man that we were quite keen on hiring. Early on, it became clear that he was enjoying himself while not really expressing the level of interest we would have expected in a second interview. He happened to attend the same school as another individual we were interviewing and peppered the conversation with "'John Smith' really loves your firm!" and other statements rallying around this individual. About 10 minutes into the interview he indicated that John Smith was his best friend and he just wanted to use the opportunity of a second interview to tell us why we should hire his friend! Needless to say we were a little stunned by this, and I wouldn't recommend the approach, but as it turns out we hired his friend and he's a fantastic articling student.

On-Campus Interview Follow Up

Edmonton	Edmonton
What their expectations are from a firm. Some students ask questions they think they are supposed to ask, but don't know what the answers mean when they get them. (ie. How many hours do you work?) An answer can/does mean different things at different firms, and can vary greatly between lawyers based on their skills, aspirations and other issues. Don't be afraid to ask tough questions to get a feel for the firm, and to delve into what the firm is really about. Pick specific examples of other firms, and ask how they compare, both positively and negatively. Look for a true answer, not a standard answer.	In an interview, we always give students a chance to ask questions of us. Often students will say that they have reviewed our materials and our website and that this has answered all of their questions. It shows a lot more interest on the part of the student if they ask follow up questions that arise from the firm's materials or from the interview shows that the student has given some thought to articling with us. Remember, the interview is a chance for you to interview the firm as much as it is a chance for the firm to interview you.
Our firm focuses on a team environment, with emphasis on the support from ALL other lawyers and support staff. We ensure that students don't feel the added stress of competing against one another. We don't have the stress of comparing themselves to the other students, as we discourage internal competitiveness, but rather focus externally on being the best firm in town.	Articling can be stressful simply due to the learning curve associated with beginning to practice the theory learned in law school. RMRF has several strategies to help students have a successful articling experience: - Two principals are assigned to a student for the duration of the articling year and as the student enters each CPLED module additional lawyers with experience in that particular area are assigned to help the student successfully complete each CPLED module. - Articling students are encouraged to focus on learning the practice of law and not be overly concerned with billable hours. To facilitate this, students are given a file related training budget that enables them to receive credit for things like observing court applications and sitting in on examinations for discovery. - RMRF provides a budget for students and associates to go for lunch as a group once a month. We also have social functions throughout the year and happy hour every Friday afternoon.
Generally, a true desire to be in Edmonton, not just a tool to get them to somewhere they believe or perceive to be better. U of A students (as Albertans on the whole) generally show a little more humility, with more people skills which are pivotal to developing into a good lawyer. Some students from other schools act like they have already been practising for 10 years, when they have no practical experience.	
No, but with a caveat. Be honest with the firms as to why you are doing it, and indicate that it is your true intention to stay in Edmonton, but you are simply trying ensure you get a job. Our firm wants exceptional lawyers who fit, and who are not always looking for what they believe are greener pastures. We want people who want to be in Edmonton, and don't think of it as a fall back position. There isn't a problem in applying at both, but if you really want to go to Calgary, don't lie to yourself or the firm, and go to Calgary. We want to hire lawyers that will one day be partners at our firm, not people that really don't want to be here.	It is not a detriment in itself to apply to both cities. However, a firm is more likely to make an offer to a student that it feels will stay with the firm long term (which generally means staying in that city long term). Most firms will likely ask if you are interviewing in both cities. A good tip when answering questions about which city you are interested in is to give specific reasons why you are interested in that city (for example your family is in that city, you grew up in and have strong connections to that city, your spouse's job would make it difficult to leave, etc.). Keep in mind that the legal community is fairly small – you should be honest in your responses to firms on this issue.
Bryan & Co. rep: Chris Cavanagh, Associate	 Jeremy Taitiger, Associate Julie Gagnon, Partner
One student went the entire interview with sunglasses on. I'm not sure if he thought we wanted to hire the coolest student, or if he thought we had *Ray-Ban* as a client	I was interviewing for a summer position during the Olympics several years ago and when I arrived at one firm for my interview it seemed like the office was deserted. It turns out that almost all of the lawyers were in the lawyers lounge watching an Olympic hockey game. After waiting a while in the reception area my interviewer emerged from the lawyers lounge and began the interview. Clearly, hockey was the most important thing on this lawyer's mind as all we talked about was Team Canada and how successful they were. We had a great conversation but never even talked about anything remotely connected to law. The interview lasted all of 15 minutes (which may have been the exact length of the intermission.)

HALLOWEEN

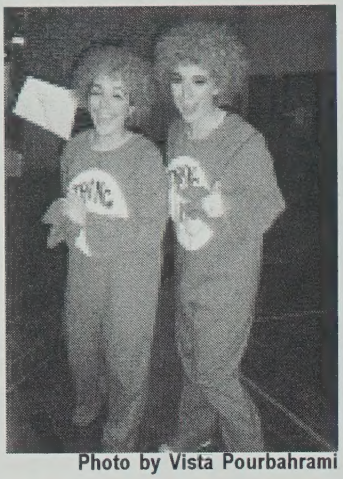


Photo by Vista Pourbahrami

Photo by Brian Man

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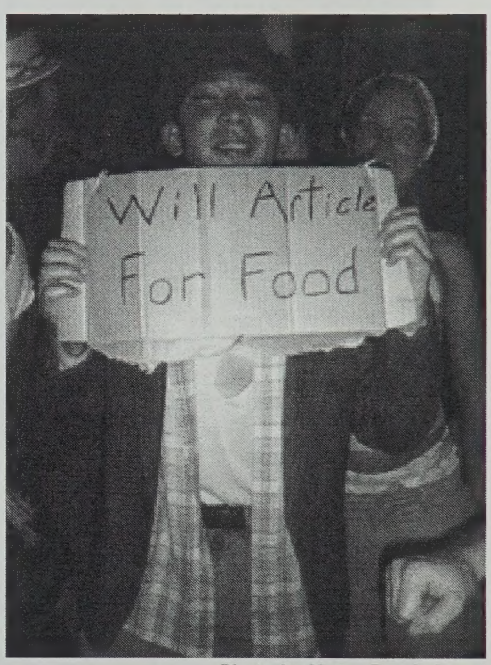
Photo by Vista Pourbahrami

Photo by Heather Grab

WINNERS OF THE MISS LAW SCHOOL PAGEANT GRACE THE DRUID!
HE'S HAD TWO BEERS!
MAN, I'M DRUNK! I'M OUT OF CONTROL! I'M TOTALLY HUGGING THIS GUY!
YOU'LL ARTICLE FOR FOOD, EH? HOW ABOUT WORKING ON MY BRIEFS FOR A SANDWICH?
AFTER PAYING DIFFERENTIAL TUITION, I COULDN'T EVEN AFFORD ANY CLOTHES!
ARR! BLESSED BY DEAN PERCY, SAYS I!

Photo by Vista Pourbahrami

I WISH SOMEONE HAD TOLD ME THIS WAS A COSTUME PARTY!
COURSE I'M FROM EDMONTON! GO OILERS, GO! IF TY CONKLIN WERE MY COUSIN, I'D MARRY HIM!



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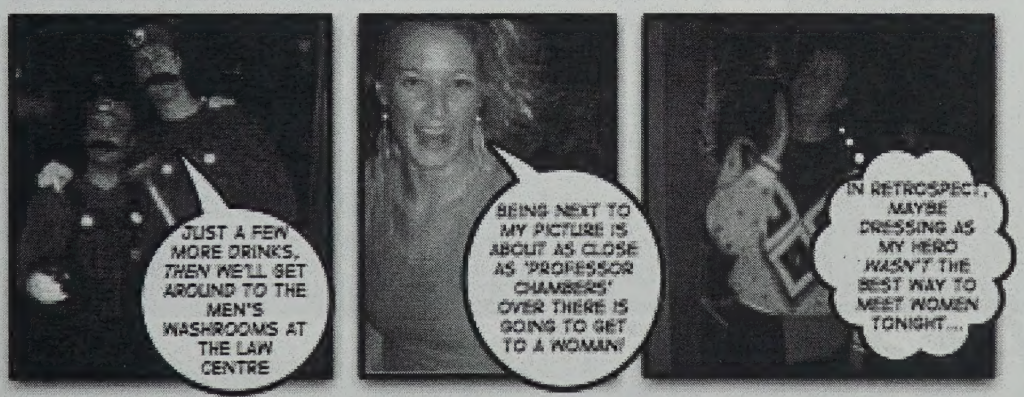

JUST A FEW MORE DRINKS, THEN WE'LL GET AROUND TO THE MEN'S WASHROOMS AT THE LAW CENTRE
BEING NEXT TO MY PICTURE IS ABOUT AS CLOSE AS 'PROFESSOR CHAMBERS' OVER THERE IS GOING TO GET TO A WOMAN!
IN RETROSPECT, MAYBE DRESSING AS MY HERO WASN'T THE BEST WAY TO MEET WOMEN TONIGHT...

Photo by Vista Pourbahrami

Photo by Vista Pourbahrami

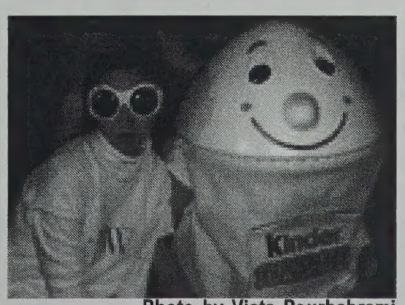


Photo by Vista Pourbahrami

Black's Corporate COLUMN

Robert Chernish

Moving Machines into the Human Zone

This week's column stems from my visit to Hong Kong in April of this year where I was able to attend Canada's ICT (Information Communications Technology) international partnering mission. Much of the business taking place at the conference involved innovative software solutions, new tech-gadgets and other science and technology inventions. I was fortunate enough to network with the Chairman of the Hong Kong Wireless Technology Industry Association Ltd; what I gathered from our conversation was that the "wireless" culture is "immersive" because it invisibly transforms our cultures, education, social communication modes and daily routines.

Because Hong Kong is on the convergence of the third generation (3G) wireless technology, they are in a frenzy to develop new wireless applications including videoconferencing, streaming video, multiplayer gaming and live role-playing games. This move into the 3G environment raises many privacy and security concerns for the millions of people that reside there. But this privacy issue is not far off for all citizens of the world. Even here in Alberta, security and privacy continue to become increasingly important to both individuals and institutions, where the FOIP (Freedom of Information Privacy) legislation becomes increasingly dynamic and integrated into our social and institutional systems. So is there an overarching solution to keep our identities safe in the growingly complex digital world?

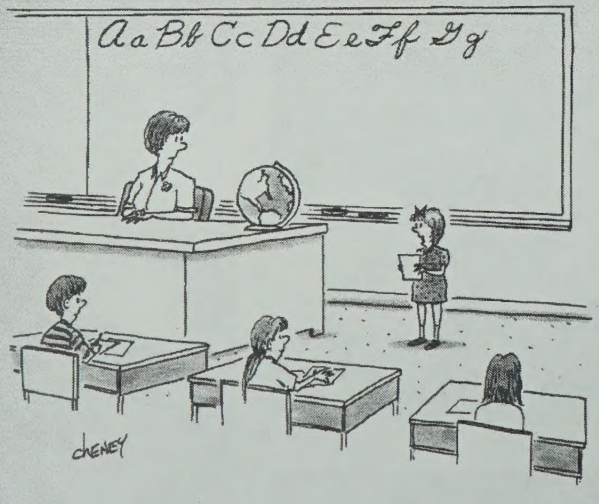
Some would say the answer is biometrics. Biometrics studies the biological elements of human individuals to formulate unique patterns that can identify a specific person. Some methods include fingerprinting, voice recognition, iris scans from the eye, facial scans, vein structures and other unique personal identifiers. It's not like biometric recognition is anything new; it's just a whole lot easier to implement since the massive consumer adoption of extremely powerful technological devices over the last ten years.

The Internet offers numerous stories about how creative minds have fooled biometric security systems, many of them reportedly discussed at the Defcon conference:

- Breathe on a fingerprint scanner to outline the pattern left behind from a previous finger's latent oil.
- Press a plastic bag filled with water on the scanner's surface to cover the sensor evenly and redefine the pattern from a previous finger.
- Apply a fingerprint to gelatin, such as gummy bear candies, and press it on the scanner.
- Create a latex fingertip from a digital picture of a fingerprint and enhance it using image software, such as Photoshop.
- Thwart a voice recognition system with a recording.

So next time you go to the airport and you get the option of speeding the process by registering an iris scan, remember that your scan is now on a database that could potentially be accessed for various international security reasons. Next time you scan your face, remember that your facial scan is in a database somewhere, and that your privacy can be invaded every time you walk into a convenience store when a super-powered camera recognizes your scan.

So what do the next generation of lawyers need to know? Brush up on your policy readings as published by the International Standards Organization (www.iso.org) because they are governing a lot of the regulations and standards around international development. Also, browse through the Canadian Patents Database (http://patents1.ic.gc.ca/intro-e.html) to see what all these people are inventing and start thinking about FOIP. And if you are really paranoid and think this stuff is just a hoot, then read Jensen and Draffan's Welcome to the Machine: Science, Surveillance, and the Culture of Control (ISBN 1-931498-52-0).



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Alumni Rugby

Photo by Kajal Patel

Photo by Lisa Yellin

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Advice
WHO ASKED YOU?!

Question: My boyfriend has the worst taste in clothes. What should I do?

She Said: I once dated a guy who wore the exact same outfit every time he saw me. It was a nice outfit, but I would have appreciated some variety. I certainly didn't appreciate it when he was late picking me up for our date once because his outfit was still in the dryer. I also dated another guy who e-mailed me while on a trip because he was so excited about the bright orange capris he had just bought. Unfortunately I was unable to think of a polite way to tell him never to wear those pants with me in public so I got to see them on our next date (which was, even more unfortunately, the day he met my parents). The pants were particularly bad because he was a larger man and thus there was a lot of the offending fabric. The point I'm trying to make here is that if he is a good guy, you should overlook his questionable or limited taste in clothes. But if he is not a good guy, then he is (as I later found out) just a jerk in ugly orange pants.

He Said: In defence of boyfriends everywhere, have you considered that the problem might be in your court, rather than his? You might have a problem with an excess donning of cherished sports jerseys, for example, but I'll wager you could name under pressure more brands of designer shoes than there are organised sports teams. Critiquing the average guy on his fashion choices might be like beating up on an unconscious child: easy to do. Maybe rather than having the "worst" taste in clothes, he merely doesn't have the exhaustive education required to compete within the parameters you're setting for him. Besides, the worst taste in clothes pretty much has to be reserved for anyone wearing a Red Sox logo in public. Tacky.

Question: Hi, advice-people. I've got a question about what's appropriate fashion here at the law school: who has it right? Should I wear a suit everyday? Or can I go with my ratty sweatpants from undergrad? I'm so confused...

She Said: I definitely think you should wear the sweatpants because they served you well in undergrad and as my aforementioned boyfriend would probably say "stick to what works for you, man." If you want to spice things up a little you could always wear the ratty sweatpants with a suit jacket. Just make sure that the colour of the jacket matches the colour of the sweatpants—otherwise you'll look stupid. And if you are a guy, ask me out because apparently I will date you.

He Said: I would say while there don't seem to be any *enforceable* rules, at least not to the extent of possible criminal liability, there is certainly an acceptable spectrum. If you want to wear a tucked-in, buttoned up shirt everyday of law school, I don't think anyone would fault you for it. A sweatshirt and pants thrown on upon rolling out of bed? You're in good company. The same goes, likely, for everything in between, and even for delightfully ecclectic combinations of the two. I'll say this, though: you wear a suit everyday of law school, and people are going to talk. About you. And your suits. Often. Nicknames like "Suit-Guy" and "Captain Fashion" have definitely been said before. So there's that. I suppose wearing nothing but boxer shorts are the other unacceptable extreme, but I don't think that road has a lot of takers yet.

"We need the larger humanity group to say this must stop."

Vista Pourbahrami (2L)

On October 26th, the first woman, first Asian and first Muslim secretary general of Amnesty International and long-term human rights advocate Irene Khan spoke to a full audience at the Myer Horiwitz. Her entrance was to the beautiful music of Nsamble, and an ensemble of banners representing the articles of The Universal Declaration of Human Rights.

Her passion and commitment to change inspired the rest of us to follow suit. Ms. Khan's speech not only promoted discourse but through personal stories about the people she has encountered in her many campaigns, also proved to open the audience's and my own eyes to international as well as domestic human rights abuses. I think it is very easy to get lost in a path of academia and forget the motivations and aspirations that brought us here. Ms. Khan reminded me what it is that brought me to this point in my life path.

Irene Khan was motivated to go to law school by a desire to help displaced peoples, and upon completion of her LLB from the University of Manchester and LLM from Harvard she continued to pursue this desire. She reminded all of those that were there to listen that "the best antidote against those who seek to erode human rights are our own voices" because we are the ones that can truly work towards making human rights abuses a thing of the past.

Ms. Khan took the office of secretary general only a few days before 9/11, and the large role "the war on terror" has played in both her personal and professional life showed through her lecture. She reminded us that "security and human rights are not mutually exclusive" because "peace and security will only come through justice and human rights", and in doing so subtly criticized the initiatives that have been taken in the middle east.

Her lecture then brought human rights abuses right back to Canadian soil, reminding her audience about how much our nation has yet to do in order to help eliminate alarming levels of violence against indigenous women. She asserted that we need the "larger humanity group to say that this must stop" and that we must first start within our own soil.

Photo by Vista Pourbahrami

L-R: Christine Murray (1L), Irene Khan, Vista Pourbahrami (2L)

Ms. Khan received a standing ovation from the audience, and left us with a reminder that change only results when we ourselves work towards it. When I asked Ms. Khan, at the post-lecture reception, how she has overcome the obstacle of being an "outsider looking in" when visiting certain communities, she reminded me that the "outsider" label disappears once stories are shared, common experiences discovered, and a realization reached that we are all people working towards the common goal of human rights for all of humanity.

HARRIET THE SPY: Employee of the Month, Supreme Court Justice...They're Almost the Same, Right?

Corey Sandquist (1L)

(Please note: this article was written prior to Miers' withdrawal as President Bush's nominee)

Consider the idea that the role of the judiciary, ideally, in any democratic society, is to be an independent body that applies the rule of law without prejudice. It ultimately protects citizens from unbridled power of the state, as well as from those in society who wish to cause harm to others. Given this, how must a society go about achieving this ideal?

While the precise answer to this question may *prima facie* elude us, it is still possible to say that the judiciary must possess qualifications enabling the application of justice, regardless of the political whim of the state. So far, I have seen absolutely nothing suggesting Harriet Miers has any qualifications to be a Justice on any court, let alone the Supreme Court. A U of A's Professor Decoste, has expressed her qualifications as "zero...nothing to recommend her. She is the worst nominee, by far, I can remember."

Professor Gall had expressed a similar feeling towards her overall qualifications, which apparently consist of being a "friend" and possessing the "correct" evangelical orientation. As far as I was able to ascertain, her qualifications include being a Bar Association president (which has been referred to as the "dumping ground of losers" by Robert Bork), sharing Bush's philosophy and having a degree in law (from a less-than-distinguished law school). It appears that President Bush simply decided to reward his faithful personal lawyer for her service with a nomination to the Supreme Court. Even the nomination was inappropriate, as it was done over an informal dinner at the White House. Hey, why not? As stated by the National Post's David Frum, it's not like there aren't employee of the month awards.

Ultimately, it seems President Bush has lost all support from his political party and the end result of Miers stepping down was inevitable. This is because, even though there may be strong party solidarity, this action simply goes beyond what is possible in a system of checks and balances. In a system such as this, there is a constraint on power. Even if a President, say hypothetically, is completely incompetent and makes a horrible nomination to the Supreme Court, this nomination will ultimately be defeated; as Decoste suggested, there is a "cure" for a bad situation.

What about in Canada? First, it is necessary to note that there have been at least two Justices appointed to the SCC directly from the bar, they possessed no judicial experience, but this in itself does not suggest these Justices will be "bad" Justices. As professor Gall has said, there exists a steep learning curve that will naturally follow from one who has a strong understanding of constitutional law and an objective view in society. Unfortunately, if the same nomination was to happen in our country, Miers would likely be expedited onto the bench, where she could be an incompetent Justice to her heart's content. If you examine the structure of how any of the judiciary are appointed in Canada, you will come to the conclusion that our benevolent Prime Minister can appoint whomever he wishes, regardless of his or her qualifications or judicial sanity. There is simply no separation of powers: no accountability. The process of appointment in Canada is opaque: there exists no accountability. A bad nomination to our Supreme Court would easily pass, as there is not even an opportunity to question the merit of the nominee, or their judicial inclination, in an open forum. It is all behind closed doors. Ultimately, if the Prime Minister decided he was going to go to dinner with a lawyer (who has been in the legal community over ten years), that could be the "qualification" necessary to be appointed a Supreme Court Justice. Further to this, when one examines the power of the judiciary and the additional powers they have been claiming recently, the wisecrack that any incompetent individual can achieve unbridled power with a little charisma (and money) is all too real. Our system is "corrupt and remains corrupt because it is tyrannical. Now it is tyrannical in a way that is tangible" (Decoste). Conversely, however, Professor Gall has suggested that there would never be a nomination such as this in Canada; "our nominees are always good candidates, although some are more preferred, all are qualified." Further to this, he has suggested we simply have a better system for nomination than the US, having made quality judges; overall quality does not require, nor is it even possible, that every Justice be perfect.

Overall, the Miers nomination is analogous to nominating an athlete for an Olympic medal simply because, well, she kind of looked like an athlete - so why not? However, this is a glib interpretation that requires the consideration that everything moves in cycles. Situations can not always be perfect, and this specific occurrence has demonstrated the need and benefits of accountability in the system.

In the US, they have effectively demonstrated that their system of checks and balances does still hold some merit. It was obvious Miers would likely never be appointed, and so the political move was made to withdraw. In Canada, there appears to be steps moving towards a better, more transparent system. Perhaps not the correct steps, but at least it has been realized that more accountability in the nominations is necessary.

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The Baseball Reference

Professor Peter Carver

I've been asked in this World Series season to write a few words to explain why I have large baseball photographs on my office wall--i.e., to justify my belief that baseball can be separated from all the other professional sports in terms of its distinct quality. The question of baseball's separation is one of the most difficult questions I've ever had to address. It calls on all my resources to provide an answer that not only meets the immediate need, but also gives a framework for future discussions of this issue. At least it's something I feel strongly about. In fact, I'm unanimous on the subject, if that's the right word.

Certainly one could go to texts to seek an answer. There is a voluminous literature on baseball. Since the framers first formalized the rules of "base ball" in the mid-1860s, it has blossomed in the creative imagination like a living tree. Even if that was never the original intent. Some of the best writers in the North American canon– Phillip Roth, Doris Kearns Goodwin, Roger Angell, W.P. Kinsella – have extolled baseball's virtues. However, on this occasion, I don't think we can rely merely on text. As wonderful as this literature is, it leaves gaps. It can't go to the very heart of the matter. It leaves unanswered questions– such as, why not hockey? For God's sake, why not hockey?

To deal with this kind of profound question, we need to go to the great unstated principles of sports watching. These are the principles that provide the architecture of fandom, its very lifeblood. If being a sports fan makes any sense at all, then that sense must be found in its underlying principles. I don't know how many principles exist altogether (there must be one or two that explain golf), but it seems to me that there are four which can help us here: athletic skill, strategy, the law of rules, and drama. To be a great sport, all of these elements must be present. Any one or two on their own are not enough. All contribute to each other, qualify each other, intermingle, and intermarry. It's quite a weave. Let's consider them in turn.

Athletic Skill – If you took a vote on the straightforward question, "who are the best athletes in professional sports?", a clear majority would probably say "basketball players". Fortunately, these things can't be settled by simplistic notions of democracy. Yes, basketball players can run and jump really well. These are rough and approximate skills compared to the precision involved in fielding, throwing and hitting a baseball. It's like comparing pumpkin-carving to dental surgery. Which would you rather watch?

Strategy – Every great sport must be able to hold our attention with the strategic options it offers. However, strategy should not only be done, but must be seen to be done. Don Cherry has been talking about "the trap" in hockey for years, but darned if I've ever been able to see the thing. Just looks like the same old back and forth to me. Now a squeeze play– that's something you can see with your own eyes.

The Law of Rules – There are no penalties in baseball. No one has to play short-handed. No plays are called back No one is moved back 10 yards, and told to try again. Foul shots– now there's real excitement for you. No, baseball is much more post-modern than that. Everyone understands that the rules are contingent on interpretation – a community of meanings, if you will. The umpire makes the call, and if you disagree, then you can go nose to nose and argue. Or seek leave to appeal to another umpire. There's almost a duty to negotiate disputes. Ultimately, if you really don't like the rules, you can try to get the agreement of two-thirds of the teams that represent 50% of all beer sales to change them. It's not intended to be easy.

Drama – Sport is like theatre, with a different ending every time. You never know how it's going to turn out. And there is nothing in sport like the drama of the late innings of a close and important ballgame. Look at the close-ups of the faces in the crowd – the in-drawn breaths, hands covering eyes, the sheer anxiety. Tension and drama like this isn't for everybody. Perhaps only a minority of people really appreciate it. But Canada has always held its minorities in high regard.

Well, that's just about as much clarity as I can provide on this matter. If you need something more – let's say you make a bet with someone, and you'd like to win it by quoting me – that's simply not my job. Hopefully, I've put you on the right track. After that, it's up to you, all of you, to sort it out among yourselves. As Pedro Martinez might say, "I'm not your Daddy."

Rugby Reflections

Brandon Tralenberg (1L)

Anybody that has played rugby with any degree of seriousness knows that it is a game of emotion and intensity. I have been lucky enough to play on many different teams, at many different levels of play, and am more than surprised to admit that the alumni match ranks as one of the most satisfying and exhilarating matches that I have been a part of.

I mention my surprise because for many on the team this year is the first time they had ever touched a rugby ball, let alone played a sport of unprotected contact. Many others had only played rugby as a member of the Golden Bearristers team, which is to say that their experience respecting the physical nature and intensity of rugby was limited. Despite this, each and every member of the team played to their best ability and gave everything they had to try and achieve victory.

In the match between the Golden Bearristers and the Olden Bearristers (the alumni) the first half offensive play was dominated by the alumni, as their forward pack size proved initially too much for our forwards. While the defense of the Golden Bearristers proved up to the task, we could not generate any offense as the forwards of the alumni team seemed to win every ruck and scrum, doing an excellent job of retaining the ball and stealing it from our players. We managed a few offensive plays, but could not hold onto the ball to manage any more than one or two phases of play. Despite a first half spent almost entirely on defense we were only down 7-0, with the alumni having successfully converted their tri for the extra two points.

I remember looking around at the end of the half at my team mates, who looked battered but far from defeated. The first half had entailed hard running from both sides, but it is much harder to play defense continuously in rugby than it is to play offense. When a team is on the defensive it feels like the other team is continuously dishing out the punishment, and this can quickly wear on team unity and intensity. I have seem many teams simply give up, or lose all focus on the match when this happens.

I saw none of this. Many 1L's, who saw limited playing time, kept up a constant banter of encouraging support and non-stop yelling and intensity, even if at most times they had no idea what they were talking about. We started the second half optimistic and focused on achieving the win, having weathered the best the alumni could throw at us.

We were deflated somewhat by the alumni scoring what would prove to be the winning tri

...Continued on page 15

CFL Predictions

Kyle Kawanami (3L)

Thus far this year, I've found that the Sports section of Canons has been somewhat of a bastion of Calgary boosterism, so hopefully this article will change all that. With the playoff picture still somewhat up in the air at this stage, this will serve as a preview of the various teams which will be involved.

Saskatchewan: A couple of weeks ago, they were the hottest team in the league. However, a strong performance against Calgary was crucial and the Riders just folded. They still have a strong running game, which should match up well against the Alouette and Argonaut defences. At the same time, going through the East means they'll be playing all of their games indoors, so the ground attack isn't as much of a key as it would be in adverse weather conditions. Of historical note, since they started inter-conference crossovers in 1997, no crossover team has ever won (and as Riders fans may recall, the last time Saskatchewan crossed over they blew a 14 point halftime lead and made Bashir Levingston a star).

Calgary: Unlike the usual people that write in the sports section (by which I mean Cam Bowman), I am capable of being objective when it comes to teams that I despise. So I will say at the outset that the Stamps have a strong defence (I would be more than happy to see John Grace in green and gold), a solid running game and have been particularly good at making halftime adjustments (Labour Day and the game in Saskatchewan come to mind). That being said, Calgary is not a top tier team. Outside of Copeland and Lewis, their receiving corps can't compete with either the Lions' or Esks' should things turn into a track meet, and Henry Burris is not at the same level as either Ricky Ray or whichever of the Lion pivots Wally decides to parade out for the playoff game. Barring major upsets, I can't see them getting by either of the other Western teams, let alone both.

Montreal: This team has gone from dominating to average in the span of a year, and I still can't figure out why. Yes, they lost Copeland, however the addition of Terry Vaughn should make up for that. With Robert Edwards, they also have a legitimate running

...Continued on page 16

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T3) Adrew Buddle - 147 points
T3) Vincent Kurata - 147 points
T5) Adrian Harvey - 144 points
T5) Travis Lidston - 144 points
7) Grag Pratch - 143 points
T8) Sebastian Mak - 142 points
T8) Michael Lipton - 142 points
T8) Ziad Sheena - 142 points
And bringing up the rear: 99) Kari & Heather - 79 points

Rugby

...Continued from page 14

early in the second half. Their #8, playing at the back of the scrum, was a monster of a man, standing head and shoulders above all of our players, and he picked the ball after the alumni pack won a scrum. Charging down the field, his hard running created an overlap of players on the outside and some quick ball movement meant enough space for there player to score in the corner.

Despite this, I feel this is where our play started to turn around. 1L Cory Sandquist, playing on the wing and realizing he was the only defender between the alumni's monster #8 and the tri line and giving up probably a hundred pounds and six inches, sacrificed life and liberty in the defense of necessity and stopped the big man in his tracks. Even though the alumni scored on this drive, Cory's example made everyone else play a little bit harder.

For the rest of the half, offensive play was dominated by the Golden Bearristers. A sustained drive early in the 4th quarter that entailed hard-nosed running by Mike Ervin and Jake Hoeppner resulted in our only tri. Spirited on by our success, we continuously pounded the ball down the alumni's throats, each charge led by the hard running of fly half Mark Hamilton. We even managed to win our share of the scrums, which had been previously dominated by the size of the Olden Bearrister forwards, thanks to the skillful striking of hooker Jon Wescott. Despite the improved play, the extra effort was too little too late and we were unable to punch in an additional score.

In rugby, when you win it's a team effort, but when you lose, every person looks to what more they could have done individually to have won the game. Saying this, I don't think that there was anything more any player on the team could have given to pull out the win. Each person left everything they had on the field, playing to their maximum ability, no matter how limited their experience. I even overheard Dean Percy, who refereed the match, saying this was the best match he has personally seen so far. Even though we lost, I don't think anyone on the Golden Bearristers was unsatisfied with our effort.

No one likes to lose, but this match gave the team something to build on. Improved play could be seen in all of the 1L and 2L players with limited experience, and although the team will be diminished by the loss of many stalwart 3L players, the future of the Faculty team looks bright.

Next year, I plan on being stronger, fitter, and way more meaner. Hope to see you there.

CFL Reflections

...Continued from page 15

game for the first time since they sent Mike Pringle and Lawrence Phillips packing. It seems to be the defence that's letting them down, which is odd given it was defence that made Montreal so dominant the last three years. At any rate, Montreal isn't the same team that they've been the last few years. They have beaten the Riders in both of their previous meetings and should do so again (however, if there's going to be a semi-final upset, it will be in this game), but I can't see them coming out of Toronto with a win.

Edmonton: In 1993 an Eskimo team that was struggling on offence plucked Lucius Floyd off the Saskatchewan practice roster, and proceeded to reel off a winning streak that culminated in them kicking the Stamps out of their dressing room and hoisting the cup in Calgary. Can history be about to repeat itself, albeit further west? While there isn't the same sense of momentum (at this stage anyways) that there was in 93, I think that the Troy Davis provides a similar spark to this edition of the Esks. While I am mildly concerned about the lack of red zone production as of late (as well as the penchant for undisciplined penalties) the Esks seem to be on the upswing heading into the playoffs. Of particular note is the fact that Sean Fleming is on a roll, which is good given the importance of the kicking game come playoff time (isn't that right, Rider fans?).

British Columbia: You know, I didn't even know that Lions fans existed until I found out that one of them was teaching me Wills. Professor Brown's poor choice of sports teams notwithstanding, B.C. seems to be following the tried and true formula of most Wally Buono coached teams: light it up in the regular season then choke hard come playoff time. The difference here is the Lions aren't even waiting for the playoffs to collapse. The Lions could still be very dangerous, if they can get their collective act together by the end of the season. But, to quote Casey Printers, "If 'if' were a Fifth, we'd all be drunk."

Toronto: Last year, they were a surprise to be in the Grey Cup. This year, I'll be shocked if Toronto isn't there. While they've been dealing with a number of injuries lately, their offence has been lighting it up and their defence is strong as always. They're still susceptible to the run, though, and every other playoff team possesses a quality back. Nobody has repeated as Grey Cup champs since the Argos did it in 97, but I think that this team has the potential to do so.

How it will all break down: I'm going to assume that B.C. can handle Saskatchewan next week, meaning they'll take the first round bye. Edmonton should get by Calgary in the Western semi, while Montreal will beat Saskatchewan out east. In the divisional finals, I'm going with Edmonton upsetting B.C. Toronto will beat Montreal, setting up a rematch of the 1987 Grey Cup in the same venue in which it was played. I've always been a believer in the maxim that Damon Allen doesn't lose Grey Cups, however in this case I think his original team can ruin the retirement. Ricky Ray takes the game MVP with Sean Fleming as top Canadian. In closing, while he cheers for the wrong teams, everything that Cam Bowman says about the new NHL rules is completely correct.

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